

EXHIBIT B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

CHAPTER 11

IN RE:

W.R. GRACE & CO., et al.,
Debtors.

Case No. 01-1139 (JFK)

Jointly Administered

DEPOSITION OF

Professor James B. Shein

May 14, 2009

Chicago, Illinois

Lead: Peter Van N. Lockwood, Esquire

Firm: Caplin & Drysdale, Chartered

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1 **Q. You've been teaching at Kellogg since**
 2 **2002, correct?**

3 A. That's right.

4 **Q. And then before that you taught at Loyola**
 5 **from 1994 to 2001?**

6 A. That's correct.

7 **Q. It indicates under the Loyola entry that**
 8 **you taught both in the graduate school of business**
 9 **and in the school of law; is that correct?**

10 A. That's correct.

11 **Q. And in the school of law the courses you**
 12 **indicate that you taught were, quote, Business**
 13 **Concepts For Lawyers, closed quote, and, quote,**
 14 **New Venture Creation, closed quote.**

15 **Could you describe for us just sort of**
 16 **generally what those two courses were?**

17 A. Yes, those courses were the business
 18 concepts where lawyers took them through the main
 19 aspects of business.

20 In other words, the goal was to teach
 21 business concepts to people who were about to go
 22 and advise businessmen, and so we took them
 23 through marketing concepts, finance, things like
 24 that.

25 **Q. Was corporation law encompassed within**

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1 **that course or?**

2 A. No.

3 **Q. And what about new venture creation?**

4 A. That's where I actually had the students
 5 put together business plans for a new business
 6 idea, and it was solely devoted to the business
 7 aspect, not the legal aspect.

8 **Q. Now, during the time that you have been**
 9 **teaching at first Loyola and then Kellogg, your**
 10 **resume indicates that you also from 1997 to the**
 11 **present have been counsel to McDermott, Will &**
 12 **Emery here in Chicago; is that correct?**

13 A. That's correct.

14 **Q. And in your capacity as counsel at that**
 15 **firm, would you regard yourself as practicing law**
 16 **or advising lawyers on business matters such as**
 17 **the ones you described yourself teaching?**

18 A. More the latter.

19 **Q. And while you've been at McDermott, Will &**
 20 **Emery, and I don't want to get into anything**
 21 **confidential here, but just as sort of a broad**
 22 **question, have you participated in the firm's**
 23 **representation of Honeywell?**

24 A. No.

25 **Q. Turning back to the first page of your**

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1 **resume, the summary in the fourth bullet point, it**
 2 **states, quote:**

3 **Deemed and, subquote, expert on corporate**
 4 **governance, subquote, by a federal court, closed**
 5 **quote.**

6 **Could you tell us, sir, what that refers**
 7 **to?**

8 A. That refers to something that a judge said
 9 in a case in California where a number of expert
 10 reports were presented to the Court, and the judge
 11 went through and said:

12 This one's not an expert, this one isn't
 13 an expert, this one is, and then when she got to
 14 Shein, she said:

15 This one is an expert on governance.

16 **Q. And what was that case?**

17 A. Thorpe.

18 **Q. Thorpe Insulation?**

19 A. Yes.

20 **Q. And did you in fact testify in that case?**

21 A. No.

22 **Q. Why not?**

23 A. Because I was stopped from testifying by
 24 an objection that the insurance carriers who had
 25 submitted these expert reports didn't have

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1 standing in the case.

2 **Q. And the Court agreed with that objection?**

3 A. Yes.

4 **Q. Or sustained it I guess.**

5 A. Or sustained.

6 **Q. Okay. And is that the only time that you**
 7 **could have testified or sought to testify in a**
 8 **court?**

9 A. No.

10 **Q. Within the last four years have you**
 11 **testified in other court proceedings?**

12 A. No.

13 **Q. How extensively I guess prior to the last**
 14 **four years have you testified in court?**

15 A. I think three times in my career.

16 **Q. And are you able to give a general**
 17 **description of in what capacity you testified**
 18 **those three times or do you need to do it one by**
 19 **one?**

20 A. Two times was in my capacity as CEO of a
 21 company, one of which was the fact that a customer
 22 didn't pay us, and the other one was a few weeks
 23 after I arrived at a company it went into
 24 bankruptcy, and, of course, I was deposed as well
 25 as testifying in court as to the company and its

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1 BY MR. LOCKWOOD:

2 **Q. And as part of your background and**
 3 **experience in which you just testified about your**
 4 **belief of what the trustees would or wouldn't do,**
 5 **do you know anything about how the various trusts**
 6 **with these kind of provisions in them have in fact**
 7 **operated over the years?**

8 A. No.

9 **Q. So your opinion in this matter is based on**
 10 **some judgment by you of human behavior?**

11 A. That's part of it.

12 **Q. And what's the rest of it?**

13 A. That this thing is designed with what I
 14 would describe as perverse incentives to not treat
 15 everybody equally.

16 **Q. And just to be complete about this**
 17 **particular topic that we are talking about, I take**
 18 **it you also have read Section 7.13 of the Trust**
 19 **agreement which is referred to in Section**
 20 **5.7(b)(3)?**

21 MR. GIANNOTTO: What page is that?

22 MR. LOCKWOOD: It's on page 46.

23 MR. GIANNOTTO: Thank you.

24 THE WITNESS: Yes.

25 BY MR. LOCKWOOD:

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1 **Q. And that provides specifically, does it**
 2 **not, for dispute resolution of disputes that could**
 3 **arise as a result of the consent provisions set**
 4 **forth in Section 5.7(b) in the case of the TAC of**
 5 **this trust agreement?**

6 A. It does have that.

7 **Q. So if I understand you correctly, you're**
 8 **basically of the view that 5.7(b)(2) and (3) and**
 9 **7.13 are in effect window dressing.**

10 A. That's a good description.

11 **Q. And, as I said earlier, you're aware of no**
 12 **instances in which any trustees have ever invoked**
 13 **similar provisions in similar trust agreements to**
 14 **actually compel TACs to agree to things that they**
 15 **didn't want to agree to.**

16 A. Not in asbestos cases, no.

17 **Q. And just to be absolutely sure, you're**
 18 **unaware of that because you've made no effort to**
 19 **learn anything about it, inquire into it or**
 20 **otherwise become knowledgeable about it.**

21 A. No, because -- the answer's no.

22 **Q. Moving to paragraph 11?**

23 A. Of which --

24 **Q. Of your report.**

25 **At the end of that you make the general**

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1 **statement, quote:**

2 **The choice of certain claimants' outside**
 3 **counsel as TAC members will create incentives for**
 4 **unfair and unequal treatment, closed quote.**

5 **Are the incentives that you refer to there**
 6 **spelled out in subsequent portions of your report?**

7 A. I believe so.

8 **Q. In paragraph 13 of your report you start**
 9 **out by saying, quote:**

10 **Based upon my review of the Bankruptcy**
 11 **Rule 2019 statements filed by the proposed members**
 12 **of the TAC or their law firms attached as Appendix**
 13 **B, you understand various things.**

14 **Could you tell us generally what the scope**
 15 **of your review of the bankruptcy 2019 statements**
 16 **was that you refer to in that language?**

17 A. I wasn't looking at the bankruptcy rule
 18 itself, the purpose of doing that.

19 My purpose of doing that was I asked
 20 Mr. Giannotto in fact, I said:

21 I'm going through here understanding that
 22 the people who are involved in this are also
 23 plaintiffs' counsel for quite a few asbestos
 24 litigants.

25 I said:

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1 How do I know that? And so he sent me the
 2 2019 statements to answer that question.

3 **Q. And just so the record is clear on this,**
 4 **the 2019 statements that you referred to are**
 5 **listed in Exhibit B to your expert report in**
 6 **paragraphs 4, 5, 6 and 7; is that correct?**

7 A. I believe so, yes.

8 **Q. And you were able to identify the law**
 9 **firms referenced in those four paragraphs as being**
 10 **the proposed members of the TAC by looking at the**
 11 **last page of the Trust agreement which is Exhibit**
 12 **2 to the exhibit book.**

13 A. Where are you?

14 **Q. The last page -- right there to your left.**

15 **Is that how you identified those four law**
 16 **firms as being the proposed TAC?**

17 A. Yes.

18 **Q. Okay. Now, when you looked at those 2019**
 19 **statements, what exactly did you look for? And by**
 20 **that I meant did you look to see how many**
 21 **claimants each one of the law firms represented**
 22 **that were set forth in the 2019 statements?**

23 A. Basically.

24 **Q. Did you do anything more such as trying to**
 25 **identify what kind of claims those claimants were**

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1 You can answer.

2 THE WITNESS: Right. I don't purport to
3 be a legal expert on this.

4 BY MR. LOCKWOOD:

5 **Q. Well, you are an expert on corporate
6 governance, right?**

7 A. Okay.

8 **Q. And in that capacity -- well, strike that.**

9 You also purport to be an expert on
10 governance of trusts if I understand it; is that
11 correct?

12 A. Yes.

13 **Q. Is it your opinion that as a matter of
14 either corporate or trust law there is something
15 improper about trying to limit -- well, let me
16 back up. I'm getting ahead of myself.**

17 We have three categories of trust
18 fiduciaries in this Trust, don't we? Trustees,
19 the TAC and the futures representative.

20 A. Yes.

21 **Q. The trustees have fiduciary obligations to
22 everybody, correct?**

23 A. Correct.

24 **Q. I mean all the Trust beneficiaries,
25 correct?**

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1 A. Correct.

2 **Q. The TAC purports to have fiduciary duties
3 only to present claimants under the agreement,
4 correct?**

5 A. Correct.

6 **Q. And the futures representative purports to
7 have only fiduciary duties to the future
8 claimants, correct?**

9 A. Correct.

10 **Q. Are you saying that that division of
11 responsibility between the TAC and the futures
12 representative in this document is in some manner
13 or another is in consistent with corporate or
14 trust law?**

15 A. I don't know. I don't know what the trust
16 law is.

17 **Q. Well, okay, let's assume then -- since
18 you're an expert I can ask you hypotheticals.**

19 Let's assume the trust law in the context
20 of this kind of a trust.

21 A. Um-hmm.

22 **Q. Would permit you to have separate
23 fiduciaries for these two categories of Trust
24 beneficiaries.**

25 **Is it your opinion that, notwithstanding**

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1 **that, the TAC would have a fiduciary duty to
2 future claimants that extends beyond what the
3 Trust document itself purports to create?**

4 A. Yes.

5 **Q. And why is that?**

6 A. Because they effectively are stepping in
7 the shoes of the trustee by ordering control of
8 the trustee.

9 **Q. And since we try and keep this in an
10 orderly fashion, with respect to your reference to
11 their control of the trustee, is it fair that
12 subsequent portions of this report identify the
13 nature and scope of the control that you're just
14 referring to?**

15 MR. GIANNOTTO: Objection as to form.

16 You may answer.

17 THE WITNESS: I believe it's all through
18 the report.

19 BY MR. LOCKWOOD:

20 **Q. We'll come to that then.**

21 In the discussion contained in paragraphs
22 14 through 17 of your report, is it fair to say
23 that you view there's a conflict of interest on
24 the part of TAC because, on the one hand, you view
25 them as having fiduciary obligations to all Trust

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1 beneficiaries, and, on the other hand, because
2 they or their law firms represent individual
3 claimants against the Trust, they have a
4 potentially conflicting set of fiduciary duties to
5 the individual claimants that they or their firms
6 represent?

7 A. I think it's more than potentially.

8 **Q. Putting aside the word "potentially," that
9 is the conflict between duties to Trust
10 beneficiaries as a whole and duties to individual
11 clients for whom they serve as counsel presenting
12 claims to the Trust.**

13 A. Yeah, this is a conflict.

14 **Q. Is the nature of the conflict as you see
15 it described in paragraph 16 of your report?**

16 A. I believe so. It may be mentioned
17 elsewhere.

18 **Q. But this paragraph 16 is sort of the
19 fundamental conflict that you see?**

20 MR. GIANNOTTO: Object. Objection as to
21 form.

22 You may answer.

23 THE WITNESS: Again, it may be throughout
24 here, but, yeah, it does talk about it here.

25 BY MR. LOCKWOOD:

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1 could you possibly hypothesize that the trustees
2 would have such an involvement in them that they
3 would be motivated to or could give special
4 treatment to the claims represented by TAC
5 members?

6 A. I'd have to look at the details.

7 **Q. The TAC operates as a multimember group,**
8 **doesn't it?**

9 A. I believe so.

10 **Q. Indeed, we established earlier there were**
11 **like four members of the TAC, correct?**

12 A. That's what the documents show, yes.

13 **Q. And as far as you know, each member of the**
14 **TAC has their own clients as compared with being**
15 **shared with other members of the TAC, correct?**

16 A. The last phrase threw me.

17 **Q. Well, you don't understand the TAC members**
18 **to all share the same clients, do you?**

19 A. I assume not.

20 **Q. And so to the extent that one TAC member**
21 **has a client or some clients who, to use your**
22 **phrase, are putting forth unqualified claims to**
23 **the Trust to be paid, what incentive do you posit**
24 **that the other TAC members have to support that**
25 **such as to cause the trustees to violate their**

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1 **fiduciary duties to the claimants as a whole in**
2 **the processing of those claims?**

3 A. Again, a long sentence, but, if I
4 understand it, first of all, let me pull out that
5 last phrase, which is what they do with each other
6 may not cause, it may not be a given that would
7 cause the trustee to violate their fiduciary
8 duties as they see it.

9 Let's start with the important part, which
10 is what would have them not objecting to each
11 other I think was what you're starting with, which
12 is:

13 I don't object to yours, you don't object
14 to mine. That's very human behavior.

15 **Q. So you posit a situation in which the TAC**
16 **members as a group sort of conclude that as**
17 **compared with all the other lawyers out there and**
18 **the other clients that make up the universe of**
19 **present claimants that the four TAC members get**
20 **together, identify among themselves categories of**
21 **claims that would otherwise be noncompensable**
22 **under this thing, enter into an agreement that**
23 **basically says:**

24 **We're going to try and force the trustees**
25 **to pay these unqualified claims, and if your**

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1 **claims are a little different from my claims and**
2 **don't have the same deficiencies, you'll agree**
3 **that I get to submit a different kind of**
4 **unqualified claim from the one that you're asking**
5 **for payment on.**

6 A. I doubt that that specific conversation
7 would take place.

8 **Q. But what you're saying is the substance of**
9 **that conduct communicated, however it's**
10 **communicated, is reasonably possible to take place**
11 **in your view.**

12 A. Yes.

13 **Q. And the basis for that hypothesis is what?**

14 A. I assume we're talking about human beings,
15 one.

16 Two, I assume these folks are in it for
17 money, and if what they do is legal, I think it's
18 just human nature that they do it. There's just
19 too many perverse incentives in this.

20 **Q. What would make you believe that**
21 **conspiring among the TAC members to get the**
22 **trustees to pay unqualified claims under the Trust**
23 **agreement is, to your phrase, quote, legal, closed**
24 **quote?**

25 A. Well, I assume they aren't going to be

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1 violating the law. If there's an incentive there
2 and they take it, and it's written into the
3 documents, the kind of incentives that are here,
4 and they're not violating any law, and if they're
5 not violating the Trust agreement, it's human
6 nature to take those incentives.

7 **Q. Doesn't your definition of an unqualified**
8 **claim encompass the notion that the claim is not**
9 **permissible to be paid under the Trust documents?**

10 A. It could be a matter of either not
11 permissible or more likely in any of the gray
12 areas in terms of being permissible or is it in,
13 you know, this category or a higher category.
14 Life is not black and white as much as a legal
15 document would purport it to be.

16 **Q. So you said in a different category, so if**
17 **a claimant comes in with a claim that only meets**
18 **the requirements for let's say Category 2 claims**
19 **and his lawyer conspires with the other TAC**
20 **members to try and compel the trustees to treat it**
21 **as a Category 3 claim, that's not violating the**
22 **Trust agreement.**

23 A. Because I suspect, given the number of
24 these that are coming in, there's going to be
25 quite a few of them that aren't clearly -- it's

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1 probably 2 1/2 versus a 3. Could it be a 2, could
2 it be a 3 therefore? Which way do we round?

3 **Q. And the decision of this by the trustees**
4 **is going to be implemented by saying that this**
5 **intermediate category for the clients of TAC**
6 **member X will be paid, but the same intermediate**
7 **category for everybody else won't be paid.**

8 A. I'm just saying that the incentive is to
9 pay certain ones and not others.

10 **Q. I hate to sound like a broken record, but**
11 **I thought we had agreed earlier that incentive had**
12 **to be coupled with opportunity before bad things**
13 **could happen, isn't that true?**

14 A. Yes.

15 **Q. And I'm asking you do you know of anything**
16 **in this Trust document that presents the**
17 **opportunity for the TAC members to do this middle**
18 **category gets bumped up for my claims but left**
19 **down at the lower category for everybody else's**
20 **claims that you just posited in a previous answer?**

21 A. Well, it's everything from that, you know,
22 they can influence what medical evidence is
23 needed, they can influence anything for the
24 proof-of-claim forms, the kind of things that I've
25 got throughout my report.

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1 **Q. But the medical evidence and the**
2 **proof-of-claim forms apply to all present**
3 **claimants, don't they?**

4 A. True, but they have their forms that they
5 use, and they're saying:

6 Well, you didn't use the right form.

7 **Q. Do you have any experience about claims**
8 **resolution at all in terms of the forms and**
9 **proof-of-claims and processing?**

10 A. For bankruptcy, yes.

11 **Q. No, no, no. For asbestos trusts.**

12 A. I'm sorry. No.

13 **Q. For any kind of trust?**

14 A. Yes, but not for asbestos.

15 **Q. Okay. What kind of trusts do you have**
16 **personal experience with observing the processing**
17 **of tort claims?**

18 A. Probably the closest that I've had is when
19 I was on the board, pension board for a steel
20 company where we had all these disability claims
21 that came in.

22 **Q. And your experience with that was that --**

23 A. It was incredibly gray areas. We debated
24 forever as to whether or not the person really was
25 disabled or not.

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1 **Q. So in that facility, you, as a trustee,**
2 **were personally and directly involved with the**
3 **resolution of the claim that was being considered;**
4 **is that correct?**

5 A. Well, there were intermediaries. We were
6 the final decider.

7 **Q. Are you aware of anything in this trust**
8 **agreement that creates a structure under which the**
9 **trustees would be the final decider of individual**
10 **claim resolution similar to what you just**
11 **described?**

12 A. Their decisions could certainly affect
13 that, yes.

14 **Q. Decisions about individual claims or**
15 **decisions about broad categories of claims?**

16 A. But by the decisions of the individual
17 claims can affect the -- the broad category rather
18 can influence the individual.

19 **Q. So what you're saying is that if a TAC**
20 **member had some individual claims that might not**
21 **qualify, that would motivate him to get the**
22 **trustees to amend the document in some way or**
23 **another so that all claims of that sort would get**
24 **better treatment as opposed to just his own**
25 **specific clients' claims.**

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1 A. If I understand the hypothetical, yes.

2 **Q. And the trustees would not -- well, and**
3 **the trustees would not pass on that proposal using**
4 **their own fiduciary judgment, but, rather, they**
5 **would be influenced to come up with a different**
6 **result because of the control and influence that**
7 **you say the TAC members have over the trustees in**
8 **the various ways you identify in your report?**

9 A. It could happen.

10 MR. GIANNOTTO: Do you want lunch?

11 MR. LOCKWOOD: Yeah. How about if we take
12 a lunch break.

13 MR. GIANNOTTO: How long of a break for
14 the people on the phone so they know?

15 We're off the record by the way.

16 (Whereupon a discussion was had
17 off the record.)

18 (Whereupon a recess was had from
19 1:06 p.m. to 1:55 p.m.)

20 MR. LOCKWOOD: Folks on the phone?

21 MS. ORR: I'm ready.

22 MR. LOCKWOOD: Okay. We're about to get
23 restarted here.

24 A MALE TELEPHONE VOICE: Sure.

25 BY MR. LOCKWOOD:

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1 between the individual interests of a member of a
2 group and the collective interest of the member of
3 the group can't be eliminated as a practical
4 matter?

5 A. Well, it's probably never eliminated. The
6 question is is are there mechanisms or ways you
7 could deal with it.

8 Q. Well, here I take it the way you would
9 propose to deal with the conflicts you've
10 identified here is by preventing personal injury
11 lawyers who help asbestos claimants from being
12 members of a TAC?

13 A. That's probably the cleanest way.

14 Q. What is your understanding of the function
15 of a TAC in a case like this?

16 A. The things that are set out in the
17 documents.

18 Q. But why not just have a trust with
19 trustees and no TAC and no futures representative?

20 A. I think you could have a TAC, and you can
21 have a futures representative. The point is to
22 eliminate the conflicts, not to eliminate the
23 positions.

24 Q. Well, what I'm asking you is what your
25 understanding of the rationale, if you will, is

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1 for having a TAC and a futures rep to look over
2 the shoulder of trustees in the first place is.

3 A. Because there's two different groups who
4 can take from that trust, and you're effectively I
5 assume putting on representative of the two most
6 important groups.

7 Q. So if you accepted the notion that you
8 just expressed, then are you saying that when you
9 select people to represent the interests of
10 present claimants, it would be the conflicts that
11 you have identified are so severe that you would
12 be better off picking people that have no
13 involvement in or experience of asbestos tort
14 litigation on the TAC in preference to people that
15 do.

16 A. If they don't have the -- if that's the
17 only way to get rid of a conflict, but I'm sure
18 there's other qualified smart people who can get
19 up to speed fast.

20 Q. Do you think you would be a good TAC
21 member?

22 A. I'd probably randomly choose quite a few
23 of my fellow professors to be good TAC members.

24 Q. And that's because you know all sorts of
25 professors that are familiar with the prosecution

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1 and evaluation of asbestos personal injury cases
2 in the state tort systems?

3 A. Because I think they can come up to speed
4 very fast.

5 Q. Let's break it down a little bit.

6 Putting aside for a moment the learning
7 curve on law professors who have never practiced
8 as a litigator in a tort case in a tort system.

9 A. I'm not talking about law professors. I'm
10 talking about business professors.

11 Q. Oh, business professors. Better yet. Who
12 aren't even lawyers.

13 A. That aren't even lawyers.

14 Q. And putting aside the learning curve for
15 those folks?

16 A. Um-hmm.

17 Q. If we ignore what you identified as the
18 conflict problems and just sort of focus solely on
19 who would be the most capable, informed, qualified
20 person to represent the interests of personal
21 injury claimants against a trust that's supposed
22 to be liquidating and valuing their claims, would
23 you actually say that your hypothetical, a smart
24 business professor, would be preferable to a
25 hypothetical equally smart personal injury lawyer?

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1 A. If it was a personal injury lawyer who had
2 nothing to do with any claimants in this case,
3 then I could go with that.

4 Q. So it's a trade-off.

5 The experience or expertise of the
6 asbestos personal injury claimants in dealing with
7 claims resolution which includes settlements and
8 litigation and what have you on the one hand, and
9 the conflict if you will between their interests
10 in the collective and their interests in
11 individual claimants. Is that fair?

12 THE WITNESS: Want to read that one back
13 to me?

14 (Whereupon the record was read as
15 requested.)

16 THE WITNESS: Could you rephrase that?
17 BY MR. LOCKWOOD:

18 Q. Well, what I'm positing is there's a
19 reason to have asbestos plaintiffs' lawyers on the
20 committee because of knowledge and experience, and
21 there's a reason that you posit not to have them
22 on there, and if you don't put them on there
23 because of the conflicts, then you lose the
24 knowledge and the experience, and that's what I
25 characterize as is that a trade-off. You can't

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1 MR. GIANNOTTO: Is that not on the report?
 2 THE WITNESS: No.
 3 BY MR. SMITH:
 4 **Q. What was the date of your law degree?**
 5 A. Law degree was 1997.
 6 **Q. Okay. And after you graduated from law**
 7 **school, you immediately started working at**
 8 **McDermott, Will & Emery; is that right?**
 9 A. Yes, as counsel.
 10 **Q. And would the opinions you're giving in**
 11 **this case be similar to the type of work you did**
 12 **at McDermott?**
 13 A. Not really.
 14 **Q. Okay. And your business school degree**
 15 **before that, do you have any recollection of about**
 16 **when that was?**
 17 A. Sounds like it was more -- longer than it
 18 was.
 19 **Q. I didn't mean this to be a difficult**
 20 **exam-type question.**
 21 A. I got the, let's see, my undergrad was
 22 '64, my MBA was '66 and my doctorate was '68.
 23 That's 19, not 18.
 24 **Q. Okay. And before you were teaching as a**
 25 **professor at Northwestern, you were listed as an**

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1 **adjunct professor; is that correct?**
 2 A. That's right.
 3 **Q. What's the distinction in the type of**
 4 **position you have now?**
 5 A. One's part time, one's full time.
 6 **Q. Okay. And how did it come about that you**
 7 **were teaching full time?**
 8 A. I was asked to.
 9 **Q. Okay. Are you a tenured track professor?**
 10 A. No.
 11 **Q. Okay. There's no possibility you could be**
 12 **eligible for tenure?**
 13 A. There is if I'm willing to undertake a
 14 tremendous part of my life in researching.
 15 **Q. Okay. But you don't have tenure and**
 16 **you're not willing to undertake the research to**
 17 **get tenure; is that right?**
 18 A. That's correct.
 19 **Q. And the Loyola law degree, were you**
 20 **working full time while you were getting that?**
 21 A. No.
 22 **Q. Okay. Were you in law school full time at**
 23 **that time?**
 24 A. Yes, but I was working part time.
 25 **Q. Have you ever worked for any of the**

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1 **lawyers in this case before?**
 2 A. No.
 3 **Q. Okay. How did you get retained in the**
 4 **case?**
 5 A. Mr. Giannotto called me.
 6 **Q. Okay. How did he find out about you?**
 7 MR. GIANNOTTO: Objection, lack of
 8 foundation.
 9 THE WITNESS: I have no idea.
 10 BY MR. SMITH:
 11 **Q. Okay. You list some documents that you've**
 12 **considered, such as the Trust agreement and things**
 13 **like that in your report. Who provided you with**
 14 **those documents?**
 15 A. I think I got some on-line or -- and then
 16 I asked Mr. Giannotto to send me copies.
 17 **Q. Okay. Were the majority of the documents**
 18 **you've relied on provided by the lawyers in this**
 19 **case?**
 20 A. I think so, yes.
 21 **Q. Okay. And in order to render your**
 22 **opinions in this case, is it fair to say that you**
 23 **had to interpret various legal documents that are**
 24 **at issue in the case?**
 25 A. I guess "interpret" is the right word.

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1 **Q. Okay. And, in addition, in order to**
 2 **render your opinions in this case, you had to**
 3 **interpret various rules and statutory provisions**
 4 **you cite in your report; is that right?**
 5 A. Right. Well, wait. Wait. You know, when
 6 you say I had to -- use your words again.
 7 **Q. Well, why don't I ask another question.**
 8 **Is it fair to say that ultimately these**
 9 **Plan documents, the Trust documents will be**
 10 **interpreted by the Court. Is that fair to say?**
 11 A. Everything's going to get interpreted by
 12 the Court.
 13 **Q. Okay. And the Court may disagree with the**
 14 **interpretations that you've given to the**
 15 **documents, right?**
 16 A. Well, I hope the Court sees them in a new
 17 light from a business and behavioral standpoint
 18 instead of just a legal standpoint because all
 19 these documents may be perfectly legal --
 20 **Q. That's not what I'm asking. I was sitting**
 21 **here today, and I heard, would it be fair to say,**
 22 **there were a lot of disagreements about**
 23 **interpretation of the documents between yourself**
 24 **and Mr. Lockwood. Would that be fair to say?**
 25 A. I think the disagreement wasn't an

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1 it.

2 THE WITNESS: As best as I understand the
3 question, the Court is probably going to rule on
4 the legality.

5 BY MR. SMITH:

6 **Q. Okay.**

7 A. I am asking the Court to look at:

8 Wait a minute. You got to look past the
9 legality sometimes and see what the impact of any
10 perverse incentives are that may be legal, but,
11 really, under good governance practices shouldn't
12 be allowed to go on.

13 **Q. Okay. So you agree with me that the**
14 **Court's going to make determinations regarding**
15 **interpretation of the documents you've relied on,**
16 **right?**

17 A. The Court will interpret the legality of
18 those documents.

19 **Q. Okay. And also the Court's going to**
20 **interpret what those documents mean, is that fair?**

21 A. From a legal standpoint, yes.

22 **Q. Okay. Now, you're not holding yourself**
23 **out as an expert on a medical expert on asbestos**
24 **disease, right?**

25 A. That's correct.

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1 **Q. And you're not an expert on what claims**
2 **have merit or don't have merit?**

3 A. That's correct.

4 **Q. And you're not an expert on medical**
5 **criteria that might be used in paying claims.**

6 A. No.

7 **Q. And you're not I suppose holding yourself**
8 **out as an expert on the interpretation of legal**
9 **documents.**

10 MR. GIANNOTTO: I'm going to object. I
11 don't even know what that means.

12 Each of these documents are legal
13 document, and he's read them and said what he
14 thinks they said. If the point you're making --

15 MR. SMITH: You're making a speaking
16 objection.

17 MR. GIANNOTTO: I understand because we
18 can't understand what you're talking about.

19 MR. SMITH: He didn't say that. You said
20 that.

21 BY MR. SMITH:

22 **Q. Are you holding yourself out as an expert**
23 **on this case on interpretation of legal documents?**

24 MR. GIANNOTTO: And I'm going to object
25 because that question makes no sense.

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1 If you can understand it, answer it.

2 THE WITNESS: I'm not interpreting
3 anything.

4 What I'm saying is I read these documents
5 and I say:

6 This is the mischief it could cause.

7 BY MR. SMITH:

8 **Q. Okay. So you're not holding yourself out**
9 **as an expert on the interpretation of legal**
10 **documents, correct?**

11 A. That's correct.

12 **Q. Okay.**

13 A. If I understand your question.

14 **Q. Now, you're not a psychologist, correct?**

15 A. I have a Ph.D. in organizational behavior,
16 which we had to get into a lot of psychology and
17 sociology under a business setting.

18 **Q. Okay. Are you holding yourself out as an**
19 **expert in psychology?**

20 A. Only as that part of the motivational part
21 in a business setting.

22 **Q. Have you ever done any empirical research**
23 **where you've collected data from subjects**
24 **regarding human behavior?**

25 A. Yes.

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1 **Q. What was that?**

2 A. For my dissertation.

3 **Q. And since your dissertation have you ever**
4 **done any empirical research on human behavior?**

5 A. No, having read substantial amounts.

6 **Q. Have you ever published any research on**
7 **human behavior in a peer review publication?**

8 A. No.

9 **Q. You've never held yourself out as an**
10 **expert in litigation on Trust procedures, correct?**

11 A. That's correct.

12 **Q. And you've never held yourself out as an**
13 **expert in litigation on trust governance, correct?**

14 MR. GIANNOTTO: I'm going to object. I
15 don't know what "litigation on trust governance"
16 as opposed to "trust governance" means.

17 BY MR. SMITH:

18 **Q. In a lawsuit have you ever held yourself**
19 **out as an expert on trust governance before?**

20 A. No.

21 MR. GIANNOTTO: Wait, wait, wait, wait.
22 I'm going to object to that. He already testified
23 that he --

24 MR. SMITH: You're telling us what his
25 testimony is, not objecting.